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Martin v. United States

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***Martin v. United States*, 894 F.3d 1356 (Fed. Cir. 2018)**

Mitch L. WerBell ^V

In *Martin v. United States*, the Federal Circuit Court dismissed a Fifth Amendment regulatory takings and exaction claim for want of ripeness when the claimant failed to apply for a permit, which would have allowed for an assessment of the cost of compliance with governmentally imposed requirements. By finding the claim unripe, the court stood firm on the historical view that federal courts may only adjudicate land-use regulatory takings and inverse condemnation claims on the merits after a regulating entity has made a final decision. However, jurisprudential evolution of the ripeness doctrine and judicial review of takings claims may be forthcoming as the United States Supreme Court is set to deliver a decision in *Knick v. Township of Scott*.

I. INTRODUCTION

In *Martin v. United States*,¹ the United States Court of Appeals for the Federal Circuit evaluated the ripeness and unconstitutional conditions doctrines within the context of a takings claim.² The lower court dismissed the claim for lack of jurisdiction because the claimants (“Inholders”) failed to show a physical occupation of their property by the defendant, the federal government (“Government”), sufficient to constitute a taking.³ Additionally, with respect to a regulatory takings argument, the court found the Inholders’ claim was not ripe because they did not exhaust federal permitting processes.⁴ The Inholders failed to apply for the required permit to rebuild United States Forest Service (“USFS”) Roads 89 and 268 (“Roads”) to access their property prior to filing suit; therefore, the USFS was not able to issue the requisite final decision necessary for the Inholders to assert a viable takings claim.⁵ The court relied on precedent to affirm that the claim was not ripe.⁶ As the court dismissed this case on ripeness grounds, the validity of the Inholders’ assertion of statutorily granted easements over the Roads remained unresolved.⁷

II. FACTUAL AND PROCEDURAL BACKGROUND

1. 894 F.3d 1356 (Fed. Cir. 2018), *cert. pending*, No. 18-477.

2. *Id.* at 1362–1365.

3. *Id.* at 1360.

4. *Id.*

5. *Id.*

6. *Id.* at 1363–1364.

7. *Id.* at 1365–1366. The Inholders have petitioned for certiorari. *See* Pet. Writ Cert., Oct. 9, 2018, No. 18-477.

The Inholders owned mining and homestead claims within the Santa Fe National Forest.⁸ The 2011 Las Conchas Fire resulted in destruction of vegetation in the National Forest, and subsequent major flooding events significantly damaged the Roads which the Inholders used to access their claims.⁹ As a result of the flooding damage, the USFS notified the Inholders in September 2011 that the Roads were unnavigable.¹⁰ However, USFS stated it would give the Inholders “limited access.”¹¹ The following April, the USFS informed the Inholders the agency decided to close public access to the Roads, citing safety concerns.¹² Further, the USFS stated there was neither public need nor justification to use public funds to rebuild the Roads because of future flooding risks and ongoing instability of the surrounding terrain.¹³

While deeming the Roads closed to the public, the USFS said “it would ‘continue to work with’ the Inholders and other private property owners to ensure they had ‘adequate and reasonable access’ to their inheld properties.”¹⁴ The Inholders responded by writing to the United States Department of Agriculture (“USDA”), claiming they already possessed statutorily granted right-of-way easements over the Roads and their wish was to imminently “utilize and repair” the Roads.¹⁵ The USDA disagreed but acknowledged the Inholders’ right to access their claims—“subject to reasonable regulations.”¹⁶ The USDA suggested the Inholders work with the USFS to rebuild the Roads because they could be subject to criminal and civil penalties if they failed to comply with federal laws governing entrance and exiting of federal lands.¹⁷

The Inholders sued the Government in the Court of Federal Claims under the Fifth Amendment’s Takings Clause, alleging that the USFS did not acknowledge their easements and, by requiring an expensive permitting process to rebuild the Roads, the Government had effectively deprived the Inholders of access to their property.¹⁸ The Court of Federal Claims dismissed the complaint and found: (1) the Inholders insufficiently

8. *Martin*, 894 F.3d at 1359 (citing *Martin v. United States*, 131 Fed. Cl. 648, 650 (2017)).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 1359–1360. USFS suggested the neighbors should work together and that the agency would aid in “facilitat[ing] the creation of a formal road association, which would then be granted a recordable private road easement,” and presented two reconstruction options. *Id.* at 1359.

15. *Id.* at 1360 (relying on 43 U.S.C. § 932 (1866), *repealed by* Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 706(a), 90 Stat. 2743, 2793).

16. *Id.* USDA asserted that under the Inholders’ cited law, “private citizens were not granted any ‘title interest in public roads.’” *Id.*

17. *Id.*

18. *Id.* The Inholders claimed the Government “physically seized [their] real property interest[s] under threat of civil and criminal prosecution.” *Id.*

pleaded a physical takings claim because there was no physical occupation of the property; and (2) the regulatory takings claim was not ripe due to the Inholders' failure to apply for a permit to build the Roads.¹⁹ The Inholders appealed, and the Federal Circuit affirmed.²⁰

III. ANALYSIS

Reviewing the case *de novo*,²¹ the court concluded that the Court of Federal Claims lacks jurisdiction over takings cases when the claim is not ripe.²² First, the court discussed the Takings Clause, which prohibits the government from seizing private property for public use without payment to the landowner.²³ Second, the court briefly explored the underlying dispute around the Inholders' asserted private easement over the Roads.²⁴ Third, the court evaluated the Inholders' alleged regulatory takings claim in the context of both ripeness and the doctrine of unconstitutional conditions.²⁵ Finally, in affirming the lower court's decision for lack of ripeness, the court suggested an alternative adjudication mechanism using the Quiet Title Act,²⁶ which would allow the Inholders to obtain a judicial determination on any ownership interests in the alleged easements.²⁷

A. *The Takings Clause & Revised Statute 2477 Easements*

The court began with a brief discussion of Takings Clause jurisprudence.²⁸ Citing *Pennsylvania Coal Company v. Mahon*,²⁹ the court noted regulatory takings fall within the scope of the Takings Clause.³⁰ The

19. *Id.* (citing *Martin*, 131 Fed. Cl. at 652–653). The Court declined to address “whether the Inholders possess[ed] a ‘vested property right in the easements they allege are coextensive with [Forest Roads 89 and 268],’ because even assuming that they h[e]ld such a property right, ‘a claim for a regulatory taking is not ripe until a permit is both sought and denied.’” *Id.*

20. *Id.* at 1360, 1366.

21. *Id.* at 1360 (citing *McGuire v. United States*, 707 F.3d 1351, 1357 (Fed. Cir. 2013)).

22. *Id.* (citing *Estate of Hage v. United States*, 687 F.3d 1281, 1285 (Fed. Cir. 2012); *Morris v. United States*, 392 F.3d 1351, 1375 (Fed. Cir. 2013)).

23. *Id.* at 1361 (*see* U.S. CONST. amend. V, cl. 3 (“[N]or shall private property be taken for public use, without just compensation.”)).

24. *Id.* at 1360–1362 (exploring 43 U.S.C. § 932 (repealed 1976)).

25. *Id.* at 1362–1365.

26. 28 U.S.C. § 2409a.

27. *Martin*, 894 F.3d. at 1365–1366.

28. *Id.* at 1361.

29. 260 U.S. 393, 415 (1922).

30. *Martin*, 894 F.3d. at 1361 (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) (“[A] regulation which denies all economically beneficial or productive use of land will require compensation under the Takings Clause.”)); *see also* *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992).

court cited the *Nollan-Dolan* nexus rule,³¹ as recently applied in *Koontz v. St. Johns River Water Management District*,³² to extend the Takings Clause to include land-use exactions, which requires an essential nexus and rough proportionality between the property the government requires for public dedication—as a condition of a land-use permit approval—and the social costs of the application.³³

Prior to addressing ripeness, the court commented on the legal background surrounding the Inholders' claim that they held valid easements over the Roads.³⁴ Under Revised Statute 2477³⁵—a repealed law which has since generated heated land-use fights in the Western United States³⁶—the Inholders alleged that the Government decided “‘to treat [the Roads] as its sole property,’ and ha[d] prohibited them from repairing [the Roads] unless they ‘t[ook] on the enormous costs’ of obtaining a special use permit.”³⁷ Revised Statute 2477 provided that “the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”³⁸ Indeed, the court noted that, as part of the “congressional pro-development lands policy,” Revised Statute 2477 rights-of-way “could be established with ‘no administrative formalities: no entry, no application, no license, no patent, and no deed on the federal side.’”³⁹ However, the Government argued that Revised Statute 2477 “did not confer any property rights on private parties,” but rather “authorized rights-of-way for the construction of public roads across unreserved federal lands,” and thus the Inholders did not hold any easements.⁴⁰ The court declined to respond to the Inholders' easement claim in the affirmative—leaving that issue for the Inholders to pursue through the Quiet Title Act or by appeal.⁴¹

B. Ripeness

Noting that exercising judicial review on the merits requires a ripe claim, the court restated the basic test under the ripeness doctrine.⁴² A

31. *Martin*, 894 F.3d. at 1361 (citing *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005)).

32. 570 U.S. 595, 605–606 (2013).

33. *Martin*, 894 F.3d at 1361.

34. *Id.* at 1361–1362.

35. 43 U.S.C. § 932 (repealed 1976).

36. *See Southern Utah Wilderness All. v. BLM*, 425 F.3d 735 (10th Cir. 2005).

37. *Martin*, 894 F.3d at 1362. The Inholders also alleged a taking without just compensation occurred when the USFS required “them to ‘surrender’ their vested...easements in exchange for a permit that would enable them to repair [the Roads] and ‘allow them the full historical use of their patented mining properties.’” *Id.*

38. *Id.* (quoting 43 U.S.C. § 932 (repealed 1976)).

39. *Id.* (quoting *Southern Utah Wilderness All.*, 425 F.3d at 741).

40. *Id.*

41. *Id.* at 1362–1363, 1365.

42. *Id.* at 1362–1363.

claim is not ripe where it relies on “contingent future events,” occurrence of which is uncertain.⁴³ Ripeness, as a judicial principle, prevents courts from entanglement in theoretical arguments by dodging untimely adjudication.⁴⁴ The court then stated the particular ripeness rule which applied to this case—a regulating entity must issue a final decision on the application of governmental regulations to private property before the property owner can challenge the land-use regulation as a takings claim.⁴⁵ The court dismissed the notion that the Inholders’ failure to apply for a permit—for the purposes of ripeness—could be “excused as futile.”⁴⁶ In fact, the court made clear the USFS recognized the Inholders’ right to adequately and reasonably access their properties and demonstrated willingness to work with the Inholders to secure such access.⁴⁷ Also, under the narrow circumstances where a compensable taking may occur based on the “cost of complying with a valid regulatory process,” the court still deemed the Inholders’ claim “premature” because the Inholders’ actual cost of compliance with the permitting was not yet determined.⁴⁸ The Inholders alleged the permitting would be “prohibitively expensive,” but the court found—with the threshold issue of timing—the claim warranted an understanding of the conditions upon which the permit would be granted, if at all.⁴⁹ Finding the claim “abstract” and “conjectural” under *Forest Properties, Inc. v. United States*,⁵⁰ the court held that the Inholders’ regulatory takings claim was not ripe because they had not yet employed the USFS permitting process.⁵¹ To be sure, the court relied on the principle that, to properly exercise judicial review, a judicial body must first know how far a regulation goes before it can find that a regulation went too far.⁵²

C. The Regulatory Takings Claim

Without determining the extent of the Inholders’ property interests, the court looked to the regulatory takings claim based on the “imposition of a special-use authorization requirement.”⁵³ The Government argued judicial review was premature because the Inholders

43. *Id.* (citing *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–581 (1985)).

44. *Martin*, 894 F.3d at 1362 (citing *Abbott Labs v. Gardener*, 387 U.S. 136, 148 (1967)).

45. *Id.* at 1363 (citing *Palazzolo*, 533 U.S. at 618).

46. *Id.* at 1364 (citing *Palazzolo*, 533 U.S. at 622; *Anaheim Gardens v. United States*, 444 F.3d 1309, 1215 (Fed. Cir. 2006)).

47. *Id.*

48. *Id.* at 1363 (citing *Morris*, 392 F.3d at 1377).

49. *Id.*

50. 177 F.3d 1360, 1365 (Fed. Cir. 1999).

51. *Martin*, 894 F.3d at 1363 (external citations omitted).

52. *Id.* (citing *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 248 (1986)).

53. *Id.* at 1362.

had not applied for the special use permit with the USFS to allow reconstruction and repair of the Roads.⁵⁴

Using Supreme Court precedent, the court recognized the continued applicability of the unconstitutional conditions doctrine, which bars the government from conditioning a person's receipt of a benefit to circumvent directly commanding the action.⁵⁵ The court restated that, with respect to exactions jurisprudence, the unconstitutional conditions doctrine includes Fifth Amendment takings claims where a landowner applies for a land-use permit from the government.⁵⁶ The court reiterated *Koontz's* caveat—recognizing that private property owners seeking the government's approval to develop their lands are particularly susceptible to abuses of the unconstitutional conditions doctrine, given permitting authorities' generally broad power.⁵⁷

The court briefly discussed the Inholders' alternative argument that their claim was ripe for judicial review because of the ongoing controversy over the permitting process and their easement claims.⁵⁸ Based on the record, the court quickly dispelled this argument by ruling that the Government never indicated its grant of a permit to rebuild the Roads was conditioned upon the Inholders' surrendering their claim of ownership over their alleged property rights.⁵⁹ In fact, at oral argument, the Government stated that the "Inholders would not waive any ownership rights in Revised Statute 2477 easements by availing themselves of [USFS] special use permitting procedures."⁶⁰ The Government continued to assert Revised Statute 2477 never granted easements to private citizens.⁶¹

The court quickly suggested the Quiet Title Act could be used to determine the extent of any ownership rights the Inholders had over the alleged easements.⁶² As a statutory circumvention of sovereign immunity, the Quiet Title Act allows for a quiet title suit where a plaintiff's claim asserts conflicting "right, title, or interest" in land against the United States.⁶³

IV. CONCLUSION

54. *Id.*

55. *Id.* at 1364 (quoting *Perry v. Sinderman*, 408 U.S. 593, 597 (1972)).

56. *Id.* (citing *Koontz*, 570 U.S. at 604; *Dolan*, 512 U.S. at 385; *Nollan*, 483 U.S. at 831–832).

57. *Id.* (quoting *Koontz*, 570 U.S. at 605).

58. *Id.* at 1364–1365. The Inholders alleged "the [G]overnment has conditioned the grant of a permit to reconstruct [the Roads] on the 'surrender' of their alleged Revised Statute 2477 easements." *Id.*

59. *Id.* at 1365.

60. *Id.*

61. *Id.* at 1364–1365 (citing Oral Arg. at 14:39–15:55, <http://oralarguments.cafc.uscourts.gov/mp3/2017-2224.mp3>).

62. *Id.* at 1365 (referencing 28 U.S.C. § 2409a).

63. *Id.* (citing *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012)).

Martin v. United States highlighted important and countervailing principles in the land-use and regulatory takings sphere. On one hand, the court noted that governmental entities should exercise proper restraint to prevent possible coercion around conditions related to permitting. On the other hand, the court stressed the importance of proper judicial review by addressing the threshold issue of ripeness and avoiding entanglement in abstract, premature arguments. Insofar as federal courts are presently willing to dismiss similar premature claims where a claimant failed to submit to a permitting process or exhaust state court remedies, the Supreme Court may turn this practice upside down if they side with property rights advocates in *Knick v. Township of Scott*.⁶⁴

64. 862 F.3d 310 (3d Cir. 2017), *cert. granted*, 138. S. Ct. 1262 (2018).